

# The Federal Flyer

## DeLay, Edwards Restore Federal Funding for Texas SIB *11th Hour Efforts Reap Big Legislative Win for Texas*

On December 20 the U.S. House of Representatives approved the conference report for the FY 2002 Department of Defense appropriations bill by a vote of 408 to 6. The Senate followed suit by a vote of 94 to 2.

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Normally the Texas Department of Transportation (TxDOT) would not be too concerned with the Department of Defense Appropriations bill. However, this year's bill included a provision that will once again grant Texas the ability to use federal highway funds in our State Infrastructure Bank (SIB). TxDOT's LAO staff had been working on this issue since 1998, when Congress stripped federal funding authority for all SIBs except in four states (California, Florida, Missouri, and Rhode Island).

This week, the work paid off. **Texas Representative and House Majority Whip Tom DeLay** (R - Sugar Land), introduced LAO-drafted language in the defense appropriations conference report to add Texas to the list of states with authority to use TEA 21 funds in their SIBs. This was no small feat. As soon as Mr. DeLay offered the amendment, the Democratic appropriations committee staff raised concerns that Texas would use their new authority to compete for funds allocated to other states. TxDOT LAO staff provided a quick fix, but by this time the bill had been approved by the appropriations committee leaders. To add anything required concurrence from all four of them.

DeLay persuaded three of the four to support adding the provisions; however, **Representative David Obey** (D - Wisconsin), the ranking House Democrat, resisted. Hours before the conference report was to be filed, LAO worked with **Representative Chet Edwards** (D - Waco), the sole Texas Democrat on the committee, to convince Obey to lift his objection.

Following Edwards' success, the conference report moved to the Rules Committee, which adopted a rule allowing no points of order against the report. Final congressional approval soon followed. The bill now goes to **President George W. Bush** for his signature.

**Texas Commissioner of Transportation John W. Johnson** was pleased with the efforts of the Texas representatives. "Today, thanks to the persistence of Representatives DeLay and Edwards, federal funds are once again available for our SIB. We are extremely happy and Texas drivers should be, too," Johnson said.

Since the Texas SIB was created in 1997, interest in the program has been strong. TxDOT has approved 34 loans totaling more than \$89 million to cities and counties around the state.

The loans are helping fund more than \$1 billion in transportation projects in Texas. Six of the loans, totaling more than \$39 million, have been used to improve transportation infrastructure along the U.S./Mexico border in Texas.

Applications for an additional \$28 million in new loans are currently being reviewed by TxDOT. Department officials say they are aware of nearly \$100 million in potential loan applications that have not yet been submitted to them. Without federal funds, those loans – and any large single loan – would likely have little chance of being considered, according to TxDOT officials.

"The State Infrastructure Bank has been our single most important financial tool in accelerating the delivery of projects," said Johnson. "The federal funding Representatives DeLay and Edwards have secured will keep it an effective program for years to come." In response, DeLay stated that "I've seen the State Infrastructure Bank move projects along faster in my district so I know it's been a success. It's also a key component of the state's future plans to deliver highway projects more quickly, so I'm glad that I could help ensure its future stability." Edwards had this to say: "I am thrilled to have played a role with others in this effort because few things will be more important to Texas' economic future than good roads. The SIB funds will help accelerate important highway projects throughout the state."



## President Signs FY 2002 USDOT Appropriations Act *New Law Provides Record Funding for Nation's Transportation Programs*

**President George W. Bush** signed H.R. 2299, the FY 2002 U.S. Department of Transportation and Related Agencies Appropriations Act into law on December 19. The new law, enacted as Public Law 107-87, provides record level funding for the nation's transportation programs. The law includes \$32.9 billion for federal highway programs, \$6.7 billion for transit programs, \$13.3 billion for Federal Aviation Administration programs (including \$3.3 billion for the Airport Improvement Program), and \$5 billion for the Coast Guard.

As reported in last week's issue of the **Federal Flyer**, Texas will receive approximately \$2.2 billion in federal highway funds (including \$62.5 million in highway discretionary program project earmarks), \$190 million in transit funding, \$21.5 million in highway safety program funds, and \$37 million in aviation funding for the state's general aviation and reliever airports.

## Rural Consultation Provision Included in Defense Bill

### *Language Requires Final Rules by February 1st*

According to the American Association of State Highway and Transportation Officials (AASHTO), the conference report accompanying the FY 2002 USDOT Appropriations Act directed the FHWA to submit to the House and Senate Committees on Appropriations no later than February 1, 2002 a letter describing the action the administration has taken to ensure that transportation officials from rural areas are being consulted in the long-range transportation planning process. Appropriators apparently felt that this language was a mistake, because in the recently passed conference report to accompany the FY 2002 Department of Defense appropriations act conferees changed the language. The new language states that "The conferees are very concerned at the lack of progress the Department [of Transportation] has made in issuing the rural consultation provision of the statewide planning regulations. After three years and a clear Congressional mandate under TEA 21, rural local elected officials continue to be left out of statewide planning discussions. The conferees fully expect this rule to be promulgated no later than February 1, 2002."

The FHWA early this year proposed to apply a detailed, prescriptive set of "principles of effective consultation" between states and rural local officials in planning transportation programs and projects. These principles were developed by the National Academy of Public Administration (NAPA) under contract to FHWA. However, states believe that these principles are too prescriptive and the FHWA should instead simply require that the consultation process be open, inclusive, early, and ongoing, as both state and local officials agree is currently being practiced throughout the country. At discussions on this issue earlier this year, there was substantial support from both rural local and state participants for the general principles over detailed principles. States hope that the FHWA will respect the states' need for flexibility in the design of their consultative processes and abandon the detailed principles set forth in the NAPA report.

## House Authorizers, Appropriators Spar Over Funding Jurisdiction

### *Letters Represent Early Skirmishes in TEA 21 Reauthorization Battle*

The classic and perennial battle between Congressional appropriators and authorizers hit a new level in the conference report to the fiscal year 2002 transportation appropriations act (P.L. 107-87). In that bill, the appropriators distributed about \$1 billion contrary to the way TEA 21 would have distributed those funds. This \$1 billion is part of the \$4.5 billion in additional gas tax revenues above the level predicted when TEA 21 was enacted. Although the appropriations bill still gives all states more formula and specific project funding than they received last year, the redirection of this "revenue aligned budget authority" (RABA) will reduce states' funding for core highway programs and Congressional High Priority Projects (CHPP) below expected FY 2002 levels.

States will lose an estimated \$423 million in core highway program funds, or 10.7 percent of the funding that TEA 21 would have provided those programs. About another \$500 million was stripped from programs in which, under TEA 21, FHWA would have allocated the funds.

Based on FWHA charts, California, Texas, and New York were the big losers from the appropriators' action. Texas lost about \$47.7 million in core program and CHPP funds, bringing the state's estimated RABA increase for fiscal year 2002 core programs to \$277.5 million. Authorizers point out that, while that still seems like a significant increase, much of the RABA money is earmarked, preventing state and local officials in Texas from using it for projects selected through the statewide planning processes.

In a letter of protest to House leadership, the leaders of the Transportation and Infrastructure Committee, the House's authorizing committee for highways, transit, and aviation programs, stated that "No prior transportation appropriations act has ever cut the state's highway formula funds and shown such disregard for the existing law." The letter was signed by Committee **Chairman Don Young** (R - Alaska), ranking member **James Oberstar** (D - Minnesota), Highways and Transit Subcommittee Chairman **Thomas Petri** (R - Wisconsin), and subcommittee ranking member **Robert Borski** (D - Pennsylvania).

In their own letter, House Appropriations Committee Chairman **C.W. "Bill" Young** (R - Florida), ranking member **David Obey**, Transportation Subcommittee Chairman **Harold Rogers** (R - Kentucky), and subcommittee ranking member **Martin Olav Sabo** (D - Minnesota) responded that Congress "should retain its duty to represent the transportation priorities of congressional districts every year, not every six," referring to the six-year period covered by TEA 21 and ISTEA.

The authorizers sent a subsequent letter to their colleagues in the House saying that the six-year period for authorization bills is set because "to do highway and transit funding, you need to plan . . . you can't do this every year or two." Appropriators, however, "don't like that we have no authority over gas taxes. " "We know our individual districts and their needs better than the political appointees at the Department of Transportation," the appropriators claimed, noting that they received requests for about 2,000 projects. They also observed that the requests came from four-fifths of the House membership, including four-fifths of the House Transportation and Infrastructure Committee. "So while some members apparently believe that 100 percent of federal highway dollars should be controlled by state officials or federal bureaucrats, apparently 4/5 of the House does not. Nor do we," the appropriators wrote.

Look for this debate to become even more vocal and visible as we near the time for reauthorization of both TEA 21 and AIR 21 in 2003. Even sooner, as the Bush Administration prepares its FY 2003 budget proposal and the current budgetary agreements lapse, the pressure to cancel special budgetary provisions such as RABA will build. Authorizers will have to fight hard to preserve what they won in TEA 21 and AIR to protect highway, transit, and aviation funding in the future.



Happy Holidays!



The *Federal Flyer* is a publication of the TxDOT Legislative Affairs Office. It is intended to provide up-to-date information on major legislative activities in the 107th Congress for the management of the Texas Department of Transportation, state leaders, and others interested in Texas transportation issues. This report will also feature key activities in the national transportation community. Sources include news services and staff reports.

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